Office - Supreme Court, U.S.
FILED
AUG 25 1982
ALEXANDER L. STEVAS,
CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-116

GREATER WASHINGTON CENTRAL LABOR COUNCIL, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

No. 82-146

FOOD AND ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

JUDITH W. ROGERS,
Corporation Counsel, D.C.
Counsel of Record for Respondent

CHARLES L. REISCHEL,
Deputy Corporation Counsel, D.C.

District Building
Washington, D.C. 20004

QUESTION PRESENTED

Whether the District of Columbia Court of Appeals erred in holding that, under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, P.L. 93-198, 87 Stat. 774 (1974), the Council of the District of Columbia properly repealed a Congressionally-enacted statute applicable solely to the District of Columbia, namely the Act of May 17, 1928 whereby Congress had provided workers' compensation for employees in employments in the District of Columbia, by enacting new local legislation providing for workers' compensation.

INDEX

SUBJECT INDEX

	Page
Question Presented	1
Statement	2
Reasons for Denying the Writ	5
Conclusion	12

CASES CITED

Cardillo v. *Liberty Mutual Insurance Co.* (1947), 330 U.S. 469	11
District of Columbia v. *Thompson Co.* (1953), 346 U.S. 100	6, 7, 8
Gudmunson v. *Cardillo* (D.C. Cir., 1942), 126 F. 2d 521	9
Matheson v. *Branch Bank of State of Alabama* (1849), 48 U.S. (7 How.) 260	6
Pernell v. *Southall Realty* (1974), 416 U.S. 363	5
United States v. *Ortiz* (1975), 422 U.S. 981	6

CONSTITUTION OF THE UNITED STATES CITED

Article I, Section 8, Clause 17	6

UNITED STATES CODE, 1976 CITED

Title 33, Sections 901 et seq.	2
Title 33, Section 903(a)	8
Title 33, Section 921(c)	2
Title 33, Section 921(d)	2, 10
Title 33, Section 939	2

ACT OF CONGRESS CITED

Act of May 17, 1928, 45 Stat 600, 615 (1928)	passim
District of Columbia Self-Government and Governmental Reorganization Act of 1974, Pub. L. 93-198, 87 Stat. 774 (1974)	passim
Section 102(a)	7
Section 302	2
Sections 601 - 603	2, 7

ACT OF CONGRESS CITED (Cont.)

Section 602(a)(3) 3, 4
Section 602(a)(4) 2
Section 602(a)(8) 2, 5
Section 602(a)(9) 11
Section 602(b) 3

DISTRICT OF COLUMBIA CODE, 1981 CITED

Section 1-201(a) 7
Section 1-204 7
Section 1-232(a)(9) 11
Section 23-101(c) 11
Sections 36-301 et seq. 3
Section 36-303 3
Section 36-345 (1982 Supp.) 3

DISTRICT OF COLUMBIA CODE, 1973 CITED

Section 36-501 4
Sections 36-501 - 36-504 3

ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CITED

District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77 ..... passim

D.C. Act 4-161 (1982), 29 D.C. Reg. 1179 (March 19, 1982) 3

OTHER AUTHORITIES CITED

27 D.C. Reg. 2503 (Jan. 13, 1980) 3
Home Rule for the District of Columbia: Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills Culminating in the District of Columbia and Governmental Reorganization Act, House Comm. Print. 93 Cong., 2nd Sess. (1974) 7, 8, 11

H. Rept. 93-482, 93d Cong., 1st Sess. (1973) 8
S. Rept. No. 973, 69th Cong., 1st Sess. (1926) 8
S. Rept. No. 852, 70th Cong., 1st Sess. (1928) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-116

GREATER WASHINGTON CENTRAL LABOR COUNCIL, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

No. 82-146

FOOD AND ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

---

BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT

Between 1921 and 1926 several bills were introduced in Congress to provide workers' compensation for employees of private employers in the District of Columbia; however, Congress was unable to agree on any one program. See S. Rep. No. 852, 70th Cong., 1st Sess. (1928) at 1-2. Congress resolved the impasse over the question in 1928 by extending to employees of private employers in the District of Columbia the provisions of the then recently enacted Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et. seq.* (1976), (Longshoremen's Act). Thus, in the Act of May 17, 1928, 45 Stat. 600; D.C. Code, 1973, § 36-501, Congress provided:

> The provisions of the Act entitled "Longshoremen's and Harbor Workers' Compensation Act," approved March 4, 1927, * * * shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs. * * *

The Longshoremen's Act is administered by the United States Secretary of Labor, 33 U.S.C. § 939. Review of administrative decisions, and enforcement of administrative orders, under the Longshoremen's Act are in the federal courts. 33 U.S.C. §§ 921 (c) and (d).

Over forty-five years later, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774 (1974) (Self-Government Act). In Section 302 of the Self-Government Act, Congress provided that, except as specified in those provisions expressly reserving congressional authority (§§ 601-603 of the Act), "the legislative power of the District shall extend to all rightful subjects of legislation within the District * * *." Sections 602(a)(4) and (a)(8) of

the Self-Government Act prohibit the Council of the District of Columbia from legislating with respect to the courts of the District, and the federal courts in the District, respectively. Section 602 (a)(3) prohibits the Council from amending or repealing any Act of Congress which concerns "the functions * * * of the United States" and § 602 (b) provides that nothing in the Self-Government Act "shall be construed as vesting in the District Government any greater authority * * * over any Federal agency * * * than was vested * * * prior to the effective date of Title IV of this Act".

On May 6, 1980, the Council of the District of Columbia adopted the District of Columbia Workers' Compensation Act of 1979, which was signed by the Mayor on May 4, 1980, and, after the 30 day period required for congressional review, became law on July 1, 1980. D.C. Law 3-77; D.C. Code, 1981, §§ 36-301 *et. seq.* That Act provides for compensation for disability or death resulting from injury to employees of private concerns who are principally employed in the District of Columbia. D.C. Code, 1981, § 36-303. Section 46 of that law provided for the repeal of the provisions of the D.C. Code (§§ 36-501-504), which made the Longshoremen Act applicable to the District of Columbia. See 27 D.C. Reg. 2503 (Jan. 13, 1980). The new law, as adopted in July, 1980, provided that it would become effective on October 1, 1981. D.C. Code, 1981, § 36-345 (1982 Supp.). However, the legislation was subsequently amended to postpone the effective date and it took effect on July 26, 1982. D.C. Act 4-161, 29 D.C. Reg. 1179 (March 19,1982).

On July 15, 1980, the Greater Washington Central Labor Council, AFL-CIO, an organization of labor unions, and three individuals, all officers of labor organizations, brought this action against the District of Columbia seeking to have the District of Columbia Workers' Compensation Act of 1979 declared null and void as beyond the legislative authority Congress delegated to the Council of the District of Columbia in the Self-Government Act. In an oral opinion

(Pet. I, App. at 19a-35a),[1], the Superior Court issued a declaratory judgment to that effect, principally on the grounds that the legislation contravened Section 602 (a)(3) of the Self-Government Act, which provides that the Council may not amend or repeal any Act of Congress "which concerns the functions or property of the United States." The court reasoned that the 1979 Act "concerns the functions of the United States" because it concerns functions presently performed by federal officials: "[T]he performance, execution and administration is by the officials of the United States. They are functions of the United States." Pet. I. App. at 30a.

The District of Columbia appealed. On appeal the Food and Allied Services Trades Council of Metropolitan Washington, an organization of labor unions, was permitted to intervene.

In an opinion filed January 28, 1982 (Pet. I App. at 35a-57a), a three judge Division of the District of Columbia Court of Appeals unanimously ruled that, in enacting the 1979 legislation, and in thereby repealing the Congressionally - enacted 1928 local statute concerning workers' compensation, the Council of the District of Columbia had acted within the authority delegated to it under the Self-Government Act. The Court reasoned essentially that the limitations on the Council's authority in the Self-Government Act are designed to restrict the Council to legislating on local matters, and that the Workers' Compensation Act of 1979 constituted such local legislation. The Court rejected the contention that the repeal of the 1928 statute affected a"function of the United States" in contravention of Section 602(a)(3) of the Self-Government Act, reasoning that "the function of the Secretary of Labor in the administration of § 36-501 is a purely local one" (Pet. I, App. at 48a), as

---

[1] The petition for writ of certiorari in No. 82-116 will be referred to herein as "Pet. I"; the petition in No. 82-146, as "Pet. II".

contrasted with "decisions made by federal officials in administering laws that are national in scope" (Id. at 45a) which are insulated from Council action by Section 602 (a)(3). The Court also rejected the contention that the Council had contravened Section 602 (a)(8) of the Self-Government Act by impermissibly affecting the jurisdiction of the federal courts.

> The Council's action merely repealed the congressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compensation Act, the local legislature did not redefine the authority of the federal courts to rule on workmen's compensation claims under the Longshoremen's Act * * *.

(Pet. I, App. at 52a).

Both the Greater Washington Central Labor Council and the Food and Allied Service Trade Council filed petitions for rehearing en banc, which were denied by order dated April 28, 1982 (Pet. I App. at 58a-60a). Four judges joined in a statement that, while they did not necessarily disagree with "the division's carefully reasoned opinion" (Pet. I, App. at 60a), they believed the decision to be sufficiently important to warrant consideration by the full court.

The Greater Washington Central Labor Council, and the three individuals who were plaintiffs in this action, filed the petition for a writ of certiorari to review the decision of the District of Columbia Court of Appeals in No. 82-116 on July 20, 1982. The Food and Allied Services Trade Council filed its petition for a writ of ceritiorari to review that decision, No. 82-146, on July 26, 1982.

REASONS FOR DENYING THE WRIT

The Court has made it clear that it will not review the decisions of the District of Columbia Courts on local matters, absent egregious error. As stated in *Pernell* v. *Southall Realty*, 416 U.S. 363, 366, 368-369 (1974):

> This Court has long expressed its reluctance to review decisions of the courts of the District involving matters of peculiarly local concern, absent a constitutional claim or a problem of general federal law of nationwide application.
>
> * * *
>
> [T]he new court structure certainly lends additional support to our longstanding practice of not overruling the courts of the District on local law matters "save in exceptional situations where egregious error has been committed." *Fisher* v. *United States*, 328 U.S., at 476, 66 S. Ct. at 1325; *Griffin* v. *United States*, 336 U.S., at 718, 69 S.Ct., and 820. This principle, long embedded in practice and now supported by the clear intent of Congress in enacting the 1970 Court Reform Act, must serve as our guide * * *.

There is no constitutional issue in this case. While petitioners now attempt to inject constitutional concerns (namely, the Supremacy Clause) into this case (Pet. I at 11-15; Pet. II at 24), they failed to raise any constitutional question below and consequently cannot do so now. See, e.g., *United States* v. *Ortiz*, 422 U.S. 981, 898 (1975); *Matheson* v. *Branch Bank of State of Alabama*, 48 U.S. (7 How.) 260, 261 (1849).[3]

Similiarly there is no issue in this case of nationwide importance. Instead the case involves the unique relationship

---

[3] In any event, these asserted constitutional questions are frivolous. The supremacy of Congress in the District of Columbia arises from Article I, Section 8, Clause 17 of the Constitution of the United States, rather than from the Supremacy Clause. The doctrine of preemption, which petitioners invoke, has no application in this context. Article I, Section 8, Clause 17 leaves no doubt that Congress has plenary authority over the District of Columbia. The question, then, is not whether Congress had occupied the field, but whether it has vacated it, by delegation to the local legislature. However, since Congress plainly can constitutionally delegate authority over workers compensation to the local legislature —— See *District of Columbia* v. *Thompson Co.*, 346 U.S. 100, 110 (1953) (Congress may delegate to the local legislature powers as broad as the police powers of a state) —— the sole question here is the extent to which Congress did so in the Self-Government Act. That, of course, is simply a question of statutory interpretation.

of the District of Columbia to the United States, and presents issues which only arise because of the peculiar historical circumstances that, rather than creating a special workers compensation system for the District of Columbia, Congress provided that the previously—created federal Longshoremen's Act should also serve that local purpose.

There certainly was no egregious error here. In enacting the Self-Government Act, Congress stated that its purpose was "to the greatest extent possible * * * [to] relieve Congress of the burden of legislating upon essentially local District matters." Section 102(a) of the Self-Government Act codified as D.C. Code, 1981, § 1-201(a). Therefore Congress provided in Section 302 of the Self-Government Act "Except as provided in Section 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District. * * * " D.C. Code, 1981, § 1-204. This Court has previously interpreted the language "rightful subjects of legislation" to delegate power "as broad as the police power of a state." *District of Columbia* v. *Thompson Co., supra*, 346 U.S. at 110. Congress consciously chose that language to indicate that it was delegating all its powers over local matters except those specifically reserved.[3]

[3] Congressman Brock Adams, the Chairman of the Subcommittee that drafted the language, explained it as

> saying basically that Congress transfers to the local government all legislative powers. *Of course, they have the power to legislate now as any State* or City government has under the Constitution.
>
> Later, in the bill, there is a reservation for the Federal Government to also legislate just like a State Legislature can legislate on city matters if it wants to or can come in and change a specific city charter.
>
> *We made a blanket transfer of power here* because this is authorized by the Constitution and what it does, it then allows the City Government to function as a City State and pass whatever legislation is necessary.

Home Rule for the District of Columbia: Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills Culminating in the District of Columbia and Governmental Reorganization Act, House Comm. Print. 93 Cong., 2d Sess. (1974) (hereinafter "Home Rule History"), p. 1034 (emphasis supplied).

(Footnote continued on page 8)

There can be no serious dispute that the matter of workers' compensation for employees of private concerns who are principally employed in the District of Columbia is essentially a local District matter. Workers' compensation for private employees has always been considered essentially a local concern. Thus Congress only enacted Federal provisions for such workers' compensation, namely, the Longshoremen's Act, when this Court held that such workers' compensation could not be provided for maritime employees under state law.[4] Even then, Congress only provided federal protection to the extent local authorities could not do so.[5]

Nor is there any serious question that the workers' compensation legislation Congress enacted for the District of

---

[3] continued from preceding page

The analysis of what the Constitution authorized Congress to do, prepared at Congressman Adams' request, is contained in the appendix to the House Committee Report, H. Rept. 93-482, 93rd Cong., 1st Sess., (1973); Home Rule History at 1498-1503. That analysis commences with, and is essentially premised on, *District of Columbia* v. *Thompson Co., supra.*

[4] The Senate Committee report on the Longshoremen's Act., No. 973, 69th Cong., 1st Sess. (1926) stated (at p.16):

> The committee deems it unnecessary to comment upon the modern change in the relation between employers and employees establishing systems of compensation as distinguished from liability. Nearly every State in the Union has a compensation law through which employees are compensated for injuries occuring in the course of their employment without regard to negligence on the part of the employer or contributory negligence on the part of the employee. *If longshoremen could avail themselves of the benefits of State compensation laws, there would be no occasion for this legislation;* but, unfortunately, they are excluded from these laws by reason of the character of their employment; and they are not only excluded but the Supreme Court has more than once held that Federal regulation can not, constitutionally, be enacted that will apply State laws to this occupation. (*Southern Pacific Co.* v. *Jensen*, 244 U.S. 205; *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149; *Washington* v. *Dawson & Co.*, 264 U.S. 219.) [Emphasis supplied.]

[5] Thus 33 U.S.C. § 903(a) provided:

> • • • Compensation shall be payable *only* if disability or death results from an injury occuring upon the navigable waters of the United States (including any dry dock) and *if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.* [Empasis supplied].

Columbia in 1928 was local legislation. As the District of Columbia Court of Appeals stated below:

> The Workmen's Compensation Act of 1928 is a local law enacted by Congress which was restricted in its application "exclusively in or to the District," rather than a federal law which is national in scope.
>
> * * *
>
> [T]he Act always has been regarded by the courts as a "local act" and construed as a state law. See generally *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 266 (1980) (plurality opinion); *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947); *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc., supra*, 198 U.S. App. D.C. at 245 n. 20, 613 F.2d at 978 n. 20.

See also *Gudmundson* v. *Cardillo*, 126 F.2d 521, 525 (D.C. Cir. 1942) ("True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other —— the local act —— Congress was exercising the powers granted in Sec. 8 of Art. I * * * to provide, for the general welfare of citizens within the District of Columbia * * * *").

Accordingly, workers' compensation is precisely the sort of local matter that Congress entrusted to the Council of the District of Columbia in the Self-Government Act. Furthermore, as the District of Columbia Court of Appeals demonstrated, none of the limitations relied upon by petitioners that Congress placed on the Council in the Self-Government Act preclude the Council from legislating on this local matter as it did.

Petitioners assert otherwise, arguing principally that the District of Columbia Court of Appeals has permitted a local legislature to limit the jurisdiction of the federal

courts, and impermissibly to interfere with a federal function, namely, the administration of the 1928 local statute by the United States Secretary of Labor. Neither contention has force.

In repealing the District of Columbia Workers Compensation Act which Congress passed in 1928, the Council did not affect the "power" or "jurisdiction" of the federal courts. The congressionally-enacted local law which the Council repealed did not purport to establish jurisdiction in the federal courts; it only defined a new category of cases as falling within a grant of judicial power that Congress had previously made. Thus, the 1928 Act (Pet. I App. at 5a-6a) does not contain one word about courts. It merely defines claims (namely, those involving "the injury or death of employees or an employer carrying on any employment in the District of Columbia * * *") that will be deemed to fall within "[t]he provisions of the Longshoremen's and Harbor Worker's Compensation Act * * *." The previously-enacted Longshoremen's Act had created jurisdiction in the courts. Thus, 33 U.S.C. §921(c) provides:

> Any person adversely affected or aggrieved * * * may obtain a review * * * *in the United States Court of Appeals* in the circuit in which the injury occurred, by filing * * * a written petition * * *. *Upon such filing, the court shall have jurisdiction* of the proceedings * * *." [Emphasis supplied.]

In repealing the 1928 local legislation, the Council did not purport to, and did not, amend, modify, or repeal that grant of jurisdiction in the Longshoremen's Act. Accordingly, the Council's action challenged here plainly did not affect the "power" or "jurisdiction" of the federal courts.

As the District of Columbia Court of Appeals demonstrated, the function performed by the United States Secretary of Labor in administering the 1928 legislation for the District of Columbia "is a purely local one" (Pet. I App. at 48a). That conclusion is required by this Court's ruling

that the 1928 Act is valid only insofar as it serves "the District's legitimate interest * * * *" *Cardillo* v. *Liberty Mutual Insurance Co.* 330 U.S. 469, 476 (1974). Furthermore, as the Court of Appeals also pointed out (Pet. I App. at 53a), the sole effect of the Council legislation at issue here on the United States Department of Labor is to decrease its workload. However, it is plain in the Self-Government Act Congress did not intend to prohibit the Council from enacting local legislation merely because in doing so the Council would affect the workload of federal officials performing local functions. Thus the United States Attorney is charged with prosecuting virtually all major crimes in the District of Columbia. D.C. Code, 1981, § 23-101(c). However, § 602(a)(9) of the Self-Government Act expressly comtemplates Council changes of the criminal provisions (i.e., Titles 22 to 24) of the D.C. Code. D.C. Code, 1981, § 1-232(a)(9). See also Home Rule History, *supra*, p. 3013 ("[T]he Conference Committee also agreed to transfer authority to the Council to make changes in Titles, 22, 23 and 24 of the District of Columbia Code * * *"). But it is obvious that such power—to create new crimes and repeal old criminal provisions—has collateral effects on the workload of the United States Attorney. Therefore it seems plain that Congress did not intend to prohibit the Council from enacting local legislation merely because the workoad of federal officials performing local functions would be affected.

In sum, then, this case involves local legislation on a matter of local concern of precisely the kind Congress has plainly delegated to the Council of the District of Columbia in the Self-Government Act, and no significant federal interests are involved. It does not warrant the exercise of this Court's jurisdiction to review on writ of certiorari.

CONCLUSION

The petitions for writs of certiorari in Nos. 28-116 and 82-146 should be denied.

JUDITH W. ROGERS,
Corporation Counsel, D.C.
Counsel of Record for Respondent

CHARLES L. REISCHEL,
Deputy Corporation Counsel, D.C.

District Building
Washington, D.C. 20004